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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,845	11/21/2003	Mark Christopher Tonkin	AD6551 US DIV 2	1469
23906	7590	06/30/2004	EXAMINER	
E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			FORTUNA, ANA M	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 06/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,845

Applicant(s)

TONKIN ET AL.

Examiner

Ana M Fortuna

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-45 and 63-80 is/are allowed.
- 6) ☒ Claim(s) 46-48, 50, 51, 53-54, 58-60 is/are rejected.
- 7) ☒ Claim(s) 49, 52, 55-57 and 62 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/21/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Allowable Subject Matter

1. Claims 49, 52, 55-57, 62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. Claims 30-45, and 63-87 are allowed.
3. The following is a statement of reasons for the indication of allowable subject matter: the combination of limitations of the claims above including the specific membrane material or the vapor transfer rate claimed is not disclosed or suggested in the prior art of record for the use or device claimed in the present invention.

Double Patenting

4. Claims 46-48, 50, 51, 53-54, 58, 59, 60, 58, 59, 60, 61 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5, 6, 7, 8, 9-12 (renumbered in the allowed application) of copending Application No. 09/878,886. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the present application overlap the limitation of the claims in the application, the growing medium is constitute by a plant seed of claim 6 (prior 44).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana M Fortuna whose telephone number is (571) 272-1141. The examiner can normally be reached on 9:30-6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ana M Fortuna
Primary Examiner
Art Unit 1723

AF
June 22, 2004